

4

In the United States
Circuit Court of Appeals

For the Ninth Circuit

UNITED STATES OF AMERICA,
Appellant,
vs.

HENRY A. JENSEN,
Appellee.

Upon Appeal from the United States District
Court for the District of Oregon

Transcript of Record

Names and address of Attorneys of Record:

GEORGE NEUNER,
United States Attorney,
FRANCIS E. MARSH,
Assistant United States Attorney,
Federal Building, Portland, Oregon.
For Appellant.

B. A. GREEN,
Corbett Building, Portland, Oregon.
For Appellee.

FILED
AUG 19 1929

PAUL P. O'BRIEN

INDEX

	Page
Amended Judgment	28
Answer	16
Assignments of Error	35
Bill of Exceptions	38
Citation on Appeal	5
Complaint	7
Demurrer	22
Motion to Strike	11
Notice of Appeal	33
Order to Strike	14
Order Sustaining Demurrer	23
Order Permitting Answer to be Amended.....	26
Order Allowing Appeal.....	32
Petition for Order of Appeal.....	30
Præcipe for Record to be Prepared by Clerk..	46
Stipulation to Strike	13
Stipulation to Amend Answer	24
Stipulation Waiving Jury	27
Stipulation Regarding Transcript of Record....	44

In the United States
Circuit Court of Appeals

For the Ninth Circuit

UNITED STATES OF AMERICA,
Appellant,

vs.

HENRY A. JENSEN,
Appellee.

Upon Appeal from the United States District
Court for the District of Oregon

Transcript of Record

Names and address of Attorneys of Record:

GEORGE NEUNER,

United States Attorney,

FRANCIS E. MARSH,

Assistant United States Attorney,

Federal Building, Portland, Oregon.

For Appellant.

B. A. GREEN,

Corbett Building, Portland, Oregon.

For Appellee.

In the District Court of the United States for the
District of Oregon

L-10516

Henry A. Jensen, Plaintiff, }
vs. }
United States of America, Defendant }

United States of America, }
District of Oregon } ss.

CITATION ON APPEAL

To HENRY A. JENSEN and his attorney, B. A.
GREEN, Greetings:

WHEREAS the United States of America has lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a judgment rendered in the District Court of the United States for the District of Oregon in your favor and has given the security required by law; you are, therefore, hereby cited and admonished to be and appear before said United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, within thirty days from the date hereto to show cause, if any there be, why the judgment should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand at Portland in said District this 2nd day of August in the year of our

Lord One Thousand Nine Hundred Twenty-nine.

JOHN H. McNARY,

Judge.

United States of America, }
District of Oregon } ss.

Due and legal service of the within CITATION ON APPEAL is hereby admitted and accepted within the State and District of Oregon, on the 2nd day of August, 1929, by receiving a copy thereof duly certified to as a true and correct copy of the original by Francis E. Marsh, Assistant United States Attorney for the District of Oregon.

B. A. GREEN,

Attorney for Plaintiff.

Endorsed:

U. S. DISTRICT COURT

District of Oregon

Filed Aug. 2, 1929

G. H. Marsh, Clerk

HSK

In the District Court of the United States for the District of Oregon, November term, 1928.

Be it Remembered, That on the 22d day of January, 1929, there was duly filed in the District Court of the United States for the District of Oregon, a Complaint, in words and figures as follows, to-wit:

L-10516

In the District Court of the United States for the
District of Oregon

Henry A. Jensen, Plaintiff, }
vs. }
United States of America, Defendant }

COMPLAINT

Comes now the plaintiff and for cause of action against the defendant complains and alleges:

I.

That plaintiff is now a resident and inhabitant of the State of Oregon and a citizen of the United States of America.

II.

That heretofore and during the year 1917 plaintiff served with the Military Forces of the United States of America, and on or about November 17, 1917, made application for and there was issued to the plaintiff a policy of War Risk Insurance in the sum of \$10,000.00, conditioned that the said defendant would pay to the plaintiff the sum of \$57.50 per month should a condition of permanent and total disability arise as defined by law, and thereafter the premiums on said policy were paid to and including the month of May, 1919, and thereafter and on June 2, 1927, plaintiff made application for the reinstatement and

conversion of the full amount of his policy of War Risk Insurance, which policy had lapsed on or about June 30, 1919, and complied with all the rules and regulations of the Veterans Bureau with respect to physical examination and upon the date of the application for reinstatement and conversion plaintiff was receiving compensation for a service connected disability, and at the time of said application for reinstatement and conversion plaintiff was suffering a degree of disability less than permanent total and with said application plaintiff made payment of the back premium of said lapsed insurance with interest at 5% per annum, and there was issued to the plaintiff a five-year convertible policy of government life insurance effective July 1, 1927.

III.

That after said date of the issuance of said policy of insurance plaintiff's mental and physical condition deteriorated from the disease from which he was suffering, to-wit: chronic nephritis, and said disease became more severe and plaintiff alleges that on or about December 7, 1927, said disease had progressed to the point where plaintiff became permanently and totally disabled and plaintiff alleges that this condition of permanent, total disability has continued since December 7, 1927, and will continue throughout his life.

IV.

That after said date of reinstatement and conversion, plaintiff paid the monthly premiums due on his policy, as provided by law, until for the month of January, 1928, at which time he was advised by the United States Veterans Bureau that his condition was that of one permanently and totally disabled and that further payments on his policy need not be made; that thereafter and subsequent to the allowance to said defendant of the award of permanent and total disability the said defendant failed and refused and now fails and refuses to pay said plaintiff under the terms and pursuant to the provisions of said policy of insurance and has disagreed with the said plaintiff as to his claim and now disagrees with said plaintiff as to his claim.

WHEREFORE, plaintiff prays for judgment and decree of this Court that he was upon December 7, 1927, permanently and totally disabled and will ever be, and that he recover from said defendant the sum of \$57.50 per month from the date of his permanent, total disability; and for plaintiff's costs and disbursements incurred herein.

B. A. GREEN,
Attorney for Plaintiff.

State of Oregon, }
County of Multnomah } ss.

I, Henry A. Jensen, being first duly sworn, depose and say that I am plaintiff in the above entitled cause; and that the foregoing Complaint is true as I verily believe.

HENRY A. JENSEN

Subscribed and sworn to before me this 18th day of January, 1929.

B. A. GREEN,

Notary Public for Oregon.

(SEAL) My Commission expires Mar 6, 1932

State of Oregon, }
County of Multnomah } ss.

Due service of the within Complaint is hereby accepted in Multnomah County, Oregon, this 22nd day of January, 1929, by receiving a copy thereof, duly certified to as such by B. A. Green, attorney for plaintiff.

GEORGE NEUNER,

U. S. Attorney.

By CHAS. W. ERSKINE,

Asst. U. S. Attorney.

Endorsed:

U. S. DISTRICT COURT

District of Oregon

Filed Jan. 22, 1929

G. H. Marsh, Clerk

B Deputy

And afterwards, to-wit, on the 25th day of March, 1929, there was duly filed in said Court, a Motion to Strike, in words and figures as follows, to-wit:

L-10516

In the District Court of the United States for the
District of Oregon

Henry A. Jensen, Plaintiff,

vs.

United States of America, Defendant

}
}

MOTION TO STRIKE

Comes now the defendant above-named by George Neuner, United States Attorney for the District of Oregon, and Francis E. Marsh, Assistant United States Attorney, and moves the Court that an order be entered herein requiring the plaintiff to strike the following portions of the complaint heretofore filed herein for the reason hereinafter stated:

Those portions of Paragraph IV of said Complaint reading as follows:

“at which time he was advised by the United States Veterans Bureau that his condition was that of one permanently and totally disabled

and that further payments on his policy need not be made; that thereafter and subsequent to the allowance to said defendant of the award of permanent and total disability.”

for the reason that the same constitutes a pleading of evidence.

GEORGE NEUNER,

United States Attorney

for the District of Oregon.

FRANCIS E. MARSH,

Assistant United States Attorney.

United States of America, }
District of Oregon }ss.

Due and legal service of the within Motion to Strike is hereby admitted and accepted within the State and District of Oregon, on the 25th day of March, 1929, by receiving a copy thereof duly certified to as a true and correct copy of the original by Francis E. Marsh, Assistant United States Attorney for the District of Oregon.

B. A. GREEN,
W

Attorney for Plaintiff.

Endorsed:

U. S. DISTRICT COURT
District of Oregon
Filed Mar. 25, 1929

G. H. Marsh, Clerk
B

And afterwards, to-wit, on the 11th day of April, 1929, there was duly filed in said Court, a Stipulation in words and figures as follows, to-wit:

L-10516

In the District Court of the United States for the
District of Oregon

Henry A. Jensen, Plaintiff,	}
vs.	
United States of America, Defendant	}

STIPULATION

It is hereby stipulated by and between B. A. Green, attorney for plaintiff, and Francis E. Marsh, Assistant United States Attorney for the District of Oregon, that the following may be stricken from plaintiff's complaint on file herein:

Paragraph IV, Page 2, beginning on Line 22 and ending on Line 27, the following:

“at which time he was advised by the United States Veterans Bureau that his condition was that of one permanently and totally disabled and that further payments on his policy need not be made; that thereafter and subsequent to the allowance to said defendant of the award of permanent and total disability.”

Dated at Portland, Oregon, this 8th day of April, 1929.

B. A. GREEN,
 Attorney for Plaintiff,
 FRANCIS E. MARSH,
 Assistant United States Attorney.

Endorsed:

U. S. DISTRICT COURT

District of Oregon

Filed Apr. 11, 1929

G. H. Marsh, Clerk

K

And afterwards, to-wit, on Thursday, the 11th day of April, 1929, the same being the 30th Judicial day of the regular March Term of said Court; present the Honorable John H. McNary, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

L-10516

In the District Court of the United States for the
 District of Oregon

Henry A. Jensen, Plaintiff,

vs.

United States of America, Defendant

}
 }
 }

ORDER TO STRIKE

THIS MATTER coming on to be heard on the stipulation heretofore filed herein, the Court being fully advised in the premises,

IT IS HEREBY ORDERED that the following

be, and the same is hereby, stricken from the complaint on file herein:

From Paragraph IV, Page 2, beginning on Line 22 and ending on Line 27, the following:

“at which time he was advised by the United States Veterans Bureau that his condition was that of one permanently and totally disabled and that further payments on his policy need not be made; that thereafter and subsequent to the allowance to said defendant of the award of permanent and total disability.”

Dated at Portland, Oregon, this 11th day of April, 1929.

JOHN H. McNARY,
District Judge.

Endorsed:

U. S. DISTRICT COURT

District of Oregon

Filed Apr. 11, 1929

G. H. Marsh, Clerk

K

And afterwards, to-wit, on the 8th day of April, 1929 there was duly filed in said Court, an Answer in words and figures as follows, to-wit:

L-10516

In the District Court of the United States for the
District of Oregon

Henry A. Jensen, Plaintiff,
 vs.
 United States of America, Defendant

}
 }
 }

ANSWER

COMES NOW the United States of America, by George Neuner, United States Attorney for the District of Oregon, and Francis E. Marsh, Assistant United States Attorney, and for answer to plaintiff's complaint, admits, denies, and alleges:

I.

That the defendant has no knowledge or information sufficient to form a belief relative to the allegations contained in Paragraph I of the complaint, and therefore denies the same.

II.

Defendant denies each and every allegation contained in Paragraph II of the complaint, except that defendant admits that heretofore, and during the year 1917, plaintiff served with the military forces of the United States of America, and on or about November 17, 1917, made application for and there was issued to the plaintiff a policy of war risk insurance in the sum of Ten Thousand (\$10,000) Dollars, conditioned that the said defendant would pay to the plaintiff the sum of Fifty-Seven and 50/100 (\$57.50) Dollars per month, should a condition of permanent and total disability arise, as defined by law, while said

policy of war risk insurance was in full force and effect, and thereafter the premiums on said policy were paid to and including the month of May, 1919, and thereafter, and on June 2, 1927, plaintiff made application for reinstatement and conversion of the full amount of his policy of war risk insurance, which policy had lapsed on or about June 30, 1919.

III.

Denies each and every allegation contained in Paragraph III of the complaint.

IV.

Admits each and every allegation contained in Paragraph IV of the complaint.

For a further and separate answer and defense to plaintiff's complaint, defendant alleges:

I.

That on June 2, 1927, plaintiff applied for reinstatement and conversion of the said Ten Thousand (\$10,000) Dollars of War Risk Insurance, which had lapsed, as aforesaid, and said application was tentatively accepted by the Director of the United States Veterans Bureau, and a five-year convertible policy of government life insurance was tentatively issued to plaintiff, effective July 1, 1927.

II.

That at the time plaintiff filed said application and at the time the same was tentatively accepted and granted, plaintiff was suffering from disability due to his military service and was rated less than permanently and totally disabled by the Veterans Bureau.

III.

That under the provisions of Section 304 of the World War Veterans Act and the regulations promulgated thereunder, plaintiff, to be entitled to reinstate or reinstate and convert his said war risk insurance, among other things, was required to submit proof satisfactory to the Director of the Veterans Bureau, that he was not permanently and totally disabled.

IV.

That at the time plaintiff filed his said application, as aforesaid, and at the time same was tentatively accepted and granted, the evidence submitted to the Director of the Veterans Bureau by plaintiff and in possession of said Director was insufficient to show to the satisfaction of said Director that plaintiff was not totally and permanently disabled; that plaintiff was therefore re-examined by the Veterans Bureau, and on December 8, 1927, was rated permanently and totally disabled as of December 7, 1927; that, as a result

of said examination, it was subsequently and on the 5th day of May, 1928, finally determined by the Director of the United States Veterans Bureau that plaintiff was permanently and totally disabled from the 19th day of August, 1926.

V.

That by reason of the fact that plaintiff was permanently and totally disabled at the time he filed his said application for reinstatement and conversion, as aforesaid, and at the time the same was tentatively accepted and a five-year convertible policy of government life insurance tentatively issued to him, plaintiff was not entitled either to reinstate or to convert his war risk insurance, and the action of the Veterans Bureau in tentatively reinstating said war risk insurance and tentatively issuing said policy was contrary to law and void, and plaintiff had no war risk insurance or government life insurance in force and effect at any time subsequent to June 30, 1919.

VI.

That on June 14, 1928, plaintiff was advised that the action of the Veterans Bureau, reinstating and converting said insurance was erroneous, contrary to law, and void, and that the same had been cancelled. Upon cancelling the said reinstatement and conversion, the Veterans Bureau

returned all premiums tendered by plaintiff by reason of plaintiff's said admitted reinstatement and conversion of his said war risk insurance.

WHEREFORE, defendant, having fully answered plaintiff's complaint, demands that plaintiff take nothing thereby and that the defendant go hence without day and recover of and from the plaintiff its costs and disbursements incurred herein.

GEORGE NEUNER,

United States Attorney for the
District of Oregon

FRANCIS E. MARSH,

Assistant United States Attorney.

United States of America, }
District of Oregon }ss.

I, Francis E. Marsh, being first duly sworn, depose and say:

That I am a duly appointed, qualified and acting Assistant United States Attorney for the District of Oregon; that I am possessed of information from which I have prepared the foregoing Answer, and that the allegations contained therein are true, as I verily believe.

FRANCIS E. MARSH

Subscribed and sworn to before me this 5th

day of April, 1929.

J. W. McCULLOCH,
Notary Public for Oregon.

(SEAL) My Commission Expires Dec. 23, 1930.

United States of America, }
District of Oregon } ss.

Due and legal service of the within Answer is hereby admitted and accepted within the State and District of Oregon, on the 8th day of April, 1929, by receiving a copy thereof duly certified to as a true and correct copy of the original by Francis E. Marsh, Assistant United States Attorney for the District of Oregon.

B. A. Green,

W

Attorney for Plaintiff

Endorsed:

U. S. DISTRICT COURT

District of Oregon

Filed Apr. 8, 1929

G. H. Marsh, Clerk

B

AND afterwards, to-wit, on the 10th day of April, 1929, there was duly filed in said Court, a Demurrer in words and figures as follows, to-wit:

No. L-10516

In the District Court of the United States for the
District of Oregon

Henry A. Jensen, Plaintiff,

vs.

United States of America, Defendant

}

DEMURRER

COMES NOW the plaintiff and files this as a demurrer to the further and separate answer and defense of the defendant filed herein, on the ground and for the reason that the things and matters therein set forth do not constitute a defense to the cause of action as alleged in plaintiff's complaint.

B. A. GREEN,

Attorney for Plaintiff.

Service accepted this 10th day of
April, 1929.

J. W. McCULLOCH,

Of attorneys for defendant.

Endorsed:

U. S. DISTRICT COURT

District of Oregon

Filed Apr. 10, 1929

G. H. Marsh, Clerk

B

And afterwards, to-wit, on Wednesday, the

17th day of April, 1929, the same being the 34th judicial day of the regular March Term of said Court; present the Honorable Robert S. Bean, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

No. L-10516

In the District Court of the United States for the
District of Oregon

Henry A. Jensen, Plaintiff,	}
vs.	
United States of America, Defendant	

ORDER

This cause having come on to be heard before the Hon. Robert S. Bean, Judge of the above entitled court, upon this, the 15th day of April, 1929, upon a demurrer as filed by the plaintiff to the answer of the defendant on the ground and for the reason that the same failed to state facts sufficient to constitute a defense to the cause of action alleged in plaintiff's complaint, plaintiff appearing in court at this time by his attorney, B. A. Green, and defendant appearing in court by Francis E. Marsh, Assistant United States Attorney, and the court being advised in the premises,

IT IS ORDERED AND ADJUDGED that said demurrer be and the same is hereby sustained,

and said defendant is given ten (10) days to further answer and plead herein.

AND IT IS SO ORDERED.

Dated this 17th day of April, 1929.

R. S. BEAN,
Judge.

Endorsed:

U. S. DISTRICT COURT

District of Oregon

Filed Apr. 17, 1929

G. H. Marsh, Clerk

And afterwards to-wit, on the 8th day of May, 1929 there was duly filed in said Court, a Stipulation in words and figures as follows, to-wit:

L-10516

In the District Court of the United States for the
District of Oregon

Henry A. Jensen, Plaintiff,

vs.

United States of America, Defendant

STIPULATION

IT IS HEREBY STIPULATED AND AGREED between Francis E. Marsh, Assistant United States Attorney for the District of Oregon, and B. A. Green, Attorney for the Plaintiff herein, that Paragraph III of Defendant's Answer in the above-entitled case may be amended to read as follows:

“Denies each and every allegation of Paragraph III of plaintiff’s complaint, except that defendant admits that plaintiff was permanently and totally disabled on December 7, 1927, and defendant further alleges that plaintiff was permanently and totally disabled on August 19, 1926, and that the Director of the United States Veterans Bureau has found that plaintiff was permanently and totally disabled on said date.”

FRANCIS E. MARSH,

Assistant United States Attorney
for the District of Oregon.

B. A. GREEN,

Attorney for Plaintiff.

Endorsed:

U. S. DISTRICT COURT

District of Oregon

Filed May 8, 1929

G. H. Marsh, Clerk

K

And afterwards, to-wit, on Wednesday, the 8th day of May, 1929, the same being the 51st judicial day of the regular March Term of said Court, present the Honorable John H. McNary, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

L-10516

In the District Court of the United States for the
District of Oregon

Henry A. Jensen, Plaintiff,	}
vs.	
United States of America, Defendant	

ORDER

Based upon the Stipulation filed herein, IT IS
HEREBY ORDERED that Paragraph III of De-
fendant's Answer herein may be amended to read
as follows:

"Denies each and every allegation of Para-
graph III of plaintiff's complaint, except that
defendant admits that plaintiff was perman-
ently and totally disabled on December 7,
1927, and defendant further alleges that plain-
tiff was permanently and totally disabled on
August 19, 1926, and that the Director of the
United States Veterans Bureau has found that
plaintiff was permanently and totally disabled
on said date."

JOHN H. McNARY,

Judge.

Endorsed:

U. S. DISTRICT COURT
District of Oregon

Filed May 8, 1929
G. H. Marsh, Clerk

K

And afterwards, to-wit, on the 8th day of May, 1929 there was duly filed in said Court, a Stipulation in words and figures as follows, to-wit:

L-10516

In the District Court of the United States for the
District of Oregon

Henry A. Jensen, Plaintiff,	}
vs.	
United States of America, Defendant	

STIPULATION

IT IS HEREBY STIPULATED by and between Francis E. Marsh, Assistant United States Attorney for the District of Oregon, who appears on behalf of the defendant, and B. A. Green, Attorney for the plaintiff herein, that the above-entitled case may be tried and determined by the Court without the intervention of a jury.

FRANCIS E. MARSH,

Assistant United States Attorney
for the District of Oregon.
Attorney for Defendant.

B. A. GREEN,

Attorney for Plaintiff.

Endorsed:

U. S. DISTRICT COURT
District of Oregon

Filed May 8, 1929
G. H. Marsh, Clerk

K

And afterwards, to-wit, on Monday, the 17th day of June, 1929, the same being the 81st judicial day of the regular March Term of said Court; present the Honorable John H. McNary, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

No. L-10516

In the District Court of the United States for the
District of Oregon

Henry A. Jensen, Plaintiff,	}
vs.	
United States of America, Defendant	

AMENDED JUDGMENT

This cause coming on for trial before the Hon. Judge McNary, Judge of the above entitled Court, upon the 8th day of May, 1929, being the day regularly set therefor, the said plaintiff and defendant having heretofore stipulated in writing, which stipulation was filed with the Clerk, that a jury be waived in said cause, and that the matter be heard before the Court without the intervention of a jury, and the Court having heard the opening statement of the respective counsel, and having heard the testimony on behalf of the plaintiff, defendant waiving testimony to be produced, the Court does find and enter its verdict that plaintiff was, upon the 7th day of December, 1927, permanently and totally disabled, and that said

re-instated and converted policy was, on December 7, 1927, in full force and effect; and

It appearing from the stipulation and statements of the counsel for the plaintiff and counsel for the defendant, that said policy so converted and so reinstated in the sum of Ten Thousand (\$10,000.00) Dollars, was and is subject to a lien in the sum of \$798.33, the balance due thereon being \$9201.67, and based upon said verdict and upon said stipulation of said respective counsel,

IT IS ORDERED AND ADJUDGED that plaintiff do have and recover judgment against the defendant for the full sum of \$52.91 per month, from December 7, 1927, in all the sum of \$952.38, and that plaintiff receive such payments thereunder, as made and provided by law, and the Court does find that \$1000.00 is a reasonable sum to be allowed to B. A. Green, as attorney's fees in said cause, to be paid to said B. A. Green as made and provided by law; and

IT IS FURTHER ORDERED that said judgment as heretofore entered and filed in this Court on the 8th day of May, 1929, be and the same is hereby vacated, and set aside, and this judgment is entered as the judgment in said above entitled cause.

AND IT IS SO ORDERED.

Dated this 17th day of June, 1929.

JOHN H. McNARY,

Judge,

Endorsed:

U. S. DISTRICT COURT

District of Oregon

Filed June 17, 1929

G. H. Marsh, Clerk

K

And afterwards, to-wit, on the 2nd day of August, 1929, there was duly filed in said Court, a Petition for Order of Appeal in words and figures as follows, to-wit:

L-10516

In the District Court of the United States for the
District of Oregon

Henry A. Jensen, Plaintiff,

vs.

United States of America, Defendant

}
}

PETITION FOR ORDER OF APPEAL

The above-named defendant, United States of America, conceiving itself aggrieved by the judgment filed and entered on the 17th day of June, 1929, in the above-entitled action does hereby appeal from said judgment and the whole thereof to the United States Circuit Court of Appeals for the Ninth Judicial Circuit for the reason and upon

the ground specified in the assignments of error filed herewith and prays that this, its appeal, be allowed; that a citation issue as provided by law and that a transcript of the record and proceedings in said cause, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit sitting at San Francisco, California.

Dated at Portland, Oregon, this 2nd day of August, 1929.

GEORGE NEUNER,

United States Attorney for the
District of Oregon.

FRANCIS E. MARSH,

Assistant United States Attorney

United States of America, }
District of Oregon }ss.

Due and legal service of the within PETITION FOR ORDER OF APPEAL is hereby admitted and accepted within the State and District of Oregon, on the 2nd day of August, 1929, by receiving a copy thereof duly certified to as a true and correct copy of the original by Francis E. Marsh, Assistant United States Attorney for the District of Oregon.

B. A. GREEN,

Attorney for Plaintiff.

Endorsed:

U. S. DISTRICT COURT

District of Oregon

Filed Aug. 2, 1929

G. H. Marsh, Clerk

HSK

And afterwards, to-wit, on Friday, the 2nd day of August, 1929, the same being the 24th judicial day of the regular July Term of said Court; present the Honorable John H. McNary, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

L-10516

In the District Court of the United States for the
District of Oregon

Henry A. Jensen, Plaintiff,

vs.

United States of America, Defendant

}

ORDER ALLOWING APPEAL

UPON THE PETITION OF the United States of America, defendant in the above-entitled cause, IT WAS ORDERED that the appeal of said defendant from the judgment herein to the United States Circuit Court of Appeals for the Ninth Circuit be and the same is hereby allowed.

Dated at Portland, Oregon, this 2nd day of August, 1929.

JOHN H. McNARY,
Judge.

Endorsed:

U. S. DISTRICT COURT

District of Oregon

Filed Aug. 2, 1929

G. H. Marsh, Clerk

HSK

And afterwards, to-wit, on the 2nd day of August, 1929, there was duly filed in said Court, a Notice of Appeal in words and figures as follows, to-wit:

L-10516

In the District Court of the United States for the
District of Oregon

Henry A. Jensen, Plaintiff,

vs.

United States of America, Defendant

}
}

NOTICE OF APPEAL

To the above-named Plaintiff HENRY A. JENSEN,
and his Attorney, B. A. GREEN;

You and each of you will take notice that the defendant, United States of America, appeals to the United States Circuit Court of Appeals for the Ninth Circuit from that certain judgment and decree made and entered in the above-entitled cause and Court and signed by Honorable John H. Mc-

Nary, one of the Judges of said District Court, on the 17th day of June, 1929, which judgment and decree were and are to the effect that plaintiff herein, Henry A. Jensen, became totally and permanently disabled on the 7th day of December, 1927, and ever since said date has been and now is permanently and totally disabled and that there is due and owing said Henry A. Jensen on a policy of Converted Insurance carried by said plaintiff, a sum equal to the accrued payments of \$52.91 per month from the 7th day of December, 1927, being in all the sum of \$952.38, and the defendant appeals from the whole of said judgment and decree.

Dated this 2nd day of August, A. D., 1929.

GEORGE NEUNER,

United States Attorney for the
District of Oregon

FRANCIS E. MARSH

Assistant United States Attorney

United States of America, }
District of Oregon } ss.

Due and legal service of the within NOTICE OF APPEAL is hereby admitted and accepted within the State and District of Oregon, on the 2nd day of August, 1929, by receiving a copy thereof duly certified to as a true and correct

copy of the original by Francis E. Marsh, Assistant United States Attorney for the District of Oregon.

B. A. GREEN,
Attorney for Plaintiff.

Endorsed:

U. S. DISTRICT COURT

District of Oregon

Filed Aug. 2, 1929

G. H. Marsh, Clerk

HSK

And afterwards, to-wit, on the 2nd day of August, 1929, there was duly filed in said Court, Assignments of Error in words and figures as to-wit:

L-10516

In the District Court of the United States for the
District of Oregon

Henry A. Jensen, Plaintiff,

vs.

United States of America, Defendant

}
}
}

ASSIGNMENTS OF ERROR

The United States of America being the defendant in the above-entitled cause and appearing by George Neuner, United States Attorney for the District of Oregon, and Francis E. Marsh, Assistant United States Attorney, and having filed

a Notice of Appeal as required by law, that the defendant appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the final order and judgment made and entered in said cause against said defendant herein, now makes and files in support of said appeal the following assignments of error upon which it will rely for a reversal of said final order and judgment upon the said appeal, and which said error is to the great detriment, injury and prejudice of this defendant, and said defendant says that in the records and proceedings upon the hearing and determination thereof in the District Court of the United States for the District of Oregon, there is a manifest error in this, to-wit:

I.

That the Court erred in sustaining the demurrer of the plaintiff to the further and separate answer and defense contained in defendant's answer to plaintiff's complaint.

II.

That the Court erred in denying the admission of proof to substantiate the allegations contained in defendant's further and separate answer as appear in Exception Number 1.

WHEREFORE, on account of the error above assigned, the defendant prays that the judgment

of this Court be reversed and that this cause be remanded to the said District Court and that such directions be given that the above errors may be corrected and law and justice be done in the matter.

Dated at Portland, Oregon, this 2nd day of August, 1929.

GEORGE NEUNER,

United States Attorney for the
District of Oregon.

FRANCIS E. MARSH,

Assistant United States Attorney

United States of America, }
District of Oregon }ss.

Due and legal service of the within ASSIGNMENTS OF ERROR is hereby admitted and accepted within the State and District of Oregon, on the 2nd day of August, 1929, by receiving a copy thereof duly certified to as a true and correct copy of the original by Francis E. Marsh, Assistant United States Attorney for the District of Oregon.

B. A. GREEN,

Attorney for Plaintiff.

Endorsed:

U. S. DISTRICT COURT

District of Oregon

Filed Aug. 2, 1929
 G. H. Marsh, Clerk
 HSK

And afterwards, to-wit, on the 2nd day of August, 1929, there was duly filed in said Court, a Bill of Exceptions in words and figures as follows, to-wit:

L-10516

In the District Court of the United States for the
 District of Oregon

Henry A. Jensen, Plaintiff,	}
vs.	
United States of America, Defendant	

BILL OF EXCEPTIONS

BE IT REMEMBERED that the above-entitled case came on to be heard before the Honorable John H. McNary, Judge of the above-entitled Court, on the 8th day of May, 1929, without a jury, and the plaintiff being represented by his attorney, B. A. Green, and the defendant by its attorney, Francis E. Marsh, Assistant United States Attorney for the District of Oregon.

WHEREUPON, the following proceedings, among others were had:

MR. GREEN: My understanding is that counsel for the Government will stipulate that

no proof is necessary with respect to the fact that Henry A. Jensen was upon December 7th, 1927, permanently and totally disabled.

MR. MARSH: We will do that; we will stipulate to that effect.

MR. GREEN: Let the record show that the stipulation is entered in open court. Then the plaintiff rests, Your Honor.

MR. MARSH: If the Court please, the defendant for the sake of the record offers to prove the following facts: First, that on June 2nd, 1927 plaintiff applied for ten thousand dollars war risk insurance, which lapsed— —

MR. GREEN: (interrupting) Just a minute; he didn't apply for ten thousand dollars war risk insurance — — it wasn't war risk insurance.

MR. MARSH: Reinstatement of the insurance which had lapsed, and said policy of war risk insurance became effective July 1st, 1927. Second, that at the time plaintiff filed his application for reinstatement and conversion he was suffering from a disability due to military service and was

rated less than permanently and totally disabled by the Veterans' Bureau. Third, that under the provisions of Section 304 of the World War Veterans' Act and the regulations promulgated thereunder, plaintiff, to be entitled to reinstate or reinstate and convert his said war risk insurance, among other things, was required to submit proof satisfactory to the Director of the Veterans' Bureau, that he was not permanently and totally disabled. Fourth, that at the time plaintiff filed his application for reinstatement and conversion of his policy, and at the time the same was tentatively accepted and granted, the evidence submitted to the Director of the Veterans' Bureau by plaintiff and in possession of said Director was insufficient to show to the satisfaction of said Director that plaintiff was not totally and permanently disabled; that plaintiff was therefore reexamined by the Veterans' Bureau, and on December 8th, 1927, was rated permanently and totally disabled as of December 7th, 1927; that, as a result of said examination, it was subsequently, and on the 5th day of May, 1928, finally determined by the Director of the United States Veterans' Bureau that

plaintiff was permanently and totally disabled from the 19th day of August, 1926. Fifth, that by reason of the fact that plaintiff was permanently and totally disabled at the time he filed his said application for reinstatement and conversion, as aforesaid, and at the time the same was tentatively accepted and a five-year convertible policy of government life insurance tentatively issued to him, plaintiff was not entitled either to reinstate or to convert his war risk insurance, and the action of the Veterans' Bureau in tentatively reinstating said war risk insurance and tentatively issuing said policy was contrary to law and void, and plaintiff had no war risk insurance or government life insurance in force and effect at any time subsequent to June 30th, 1919. Sixth, that on June 14th, 1928, plaintiff was advised that the action of the Veterans' Bureau, reinstating and converting said insurance was erroneous, contrary to law, and void, and that the same had been cancelled— —

THE COURT: (interrupting) Don't you want to introduce evidence sustaining the allegations of your answer?

MR. MARSH: I am about through now. Upon cancelling the said reinstatement and conversion, the Veterans' Bureau returned all premiums tendered by plaintiff by reason of plaintiff's said admitted reinstatement and conversion of his said war risk insurance. Those are the allegations in our affirmative answer, and we would like to offer proof on that answer. That is the one that was stricken by Judge Bean on the demurrer.

MR. GREEN: At this time the plaintiff objects to the offer of proof, upon the ground that the same is incompetent, irrelevant, and immaterial, and not within the issues and pleadings of this case, and not tending to prove or disprove any issue of the pleadings in this case, and upon the further ground that the offer of proof as made by the defendant constitutes an offer of proof to prove the allegations of the further and separate answer of the defendant, to which further and separate answer a demurrer was heretofore filed, and upon argument thereof the demurrer was sustained, and by order of the court said further and separate answer was stricken, and therefore the offer of proof

as made at this time by the defendant is not within the issues of the pleadings of this case.

THE COURT: In view of the holding of Judge Bean in sustaining the demurrer to the answer of defendant, I will sustain the objection.

MR. MARSH: We may note an exception?

THE COURT: An exception is noted.

IT IS HEREBY CERTIFIED that the foregoing proceedings were had upon the trial in this cause, and that the Bill of Exceptions contains all the evidence relative to or necessary to an understanding of the foregoing objection and exception.

IT IS FURTHER CERTIFIED that the foregoing exception asked or taken by the defendant was allowed by the Court and this Bill of Exceptions was duly presented and filed within the time fixed by law and the orders of this court and is by me duly allowed and signed this 2nd day of August, 1929.

JOHN H. McNARY,

One of the Judges of the
District Court of the United
States for the District of
Oregon.

O. K.

B. A. GREEN,

Attorney for Plaintiff.

Endorsed:

U. S. DISTRICT COURT

District of Oregon

Filed Aug. 2, 1929

G. H. Marsh, Clerk

HSK

And afterwards, to-wit, on the 2nd day of August, 1929, there was duly filed in said Court, a Stipulation in words and figures as follows, to-wit:

L-10516

In the District Court of the United States for the
District of Oregon

Henry A. Jensen, Plaintiff,

vs.

United States of America, Defendant

}

STIPULATION

IT IS HEREBY STIPULATED by and between the respective parties to the above-entitled action that the record and transcript to be prepared by the Clerk of the Court and transmitted to the United States Circuit Court of Appeals for the Ninth Circuit shall consist of the following:

Citation on Appeal

Complaint

Motion to Strike

Stipulation to Strike

Order to Strike

Answer

Demurrer

Order Sustaining Demurrer

Stipulation to Amend Answer

Order Permitting Answer to be Amended

Stipulation Waiving Jury

Amended Judgment

Petition for Order of Appeal

Order Allowing Appeal

Notice of Appeal

Assignments of Error with Endorsements
thereon

Bill of Exceptions with Endorsements thereon

This Stipulation

Praecipe for Record to be prepared by Clerk.

B. A. GREEN,

Attorney for Plaintiff.

FRANCIS E. MARSH,

Assistant United States Attorney
for the District of Oregon.

Endorsed:

U. S. DISTRICT COURT

District of Oregon

Filed Aug. 2, 1929
 G. H. Marsh, Clerk
 HSK

And afterwards, to-wit, on the 2nd day of August, 1929, there was duly filed in said Court, a Praeceptum in words and figures as follows, to-wit:

L-10516

In the District Court of the United States for the
 District of Oregon

Henry A. Jensen, Plaintiff,	}
vs.	
United States of America, Defendant	

PRAECEPTUM

**TO THE CLERK OF THE ABOVE-ENTITLED
 COURT:**

You are hereby directed to please prepare and certify the record in the above cause for transmission to the United States Circuit Court of Appeals for the Ninth Circuit, including therein a certified copy of all papers filed and proceedings had in the above-entitled cause, which are necessary to a determination thereof in said appellate Court and especially including therein the following documents:

Citation on Appeal

Complaint

Motion to Strike

Stipulation to Strike

Order to Strike

Answer

Demurrer

Order Sustaining Demurrer

Stipulation to Amend Answer

Order Permitting Answer to be Amended

Stipulation Waiving Jury

Amended Judgment

Petition for Order of Appeal

Order Allowing Appeal

Notice of Appeal

Assignments of Error with Endorsements
thereon

Bill of Exceptions with Endorsements thereon

Stipulation

This Praecipe for Record to be Prepared by
Clerk.

Dated at Portland, Oregon, this 2nd day of
August, 1929.

FRANCIS E. MARSH,
Assistant United States Attorney.

Endorsed:

U. S. DISTRICT COURT

District of Oregon

Filed Aug. 2, 1929

G. H. Marsh, Clerk

HSK

